

**Iowa Department of Natural Resources
Natural Resource Commission**

ITEM

12

DECISION

TOPIC

Notice of Intended Action – Chapter 8 – Contracts for Public Improvements and Professional Services

The Commission is requested to approve this Notice of Intended Action to amend chapter 8, Contracts for Public Improvements and Professional Services. Chapter 8 provides the regulations for entering into contracts for public improvements and professional services.

The proposed new chapter will adopt by reference changes to 561 IAC chapter 8. The amendments change the threshold amount for which the Department of Natural Resources must seek approval from the Natural Resources Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds are in line with changes to Iowa Code chapter 26.

The Department is in the midst of revising and updating the entire chapter related to contracting rules to ensure compliance with applicable state law and to improve the clarity of the rules, and will be seeking approval from the Commission in the future for more extensive changes. The Department, however, is moving forward with these proposed smaller changes to the public improvement portions of the rule at this time to accommodate the upcoming construction season.

Kelley Myers, Attorney
Legal Services Bureau
January 8, 2009

Attachments:

Notice of Intended Action: Chapter 8, Contracts for Public Improvements and Professional Services

Notice of Intended Action: 561 IAC Chapter 8, Contracts for Public Improvements and Professional Services

NATURAL RESOURCES COMMISSION[571]

Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 8, “Contracts for Public Improvements and Professional Services,” and adopt a new Chapter 8 with the same title, Iowa Administrative Code.

The proposed new chapter will adopt by reference changes to 561 IAC chapter 8. The amendments change the threshold amount for which the Department of Natural Resources must

seek approval from the Natural Resources Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds are in line with changes to Iowa Code chapter 26.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 17, 2009. Such written materials should be directed to Kelley Myers, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-7147; or e-mail Kelley.Myers@dnr.iowa.gov. Persons who wish to convey their views orally should contact Kelley Myers at (515)281-5634 or at Ms. Myers' office by visiting the fourth floor of the Wallace State Office Building.

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.” Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The following amendment is proposed.

Rescind 571—Chapter 8 and adopt the following **new** Chapter 8 in lieu thereof:

CHAPTER 8 CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

571—7.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 8, Iowa Administrative Code, as amended through March 25, 2009.

Date

Richard A. Leopold, Director

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DEPARTMENT OF NATURAL RESOURCES [561] Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.4, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 8, “Contracts for Public Improvements and Professional Services,” Iowa Administrative Code.

The proposed amendment will change the threshold amount for which the Department of Natural Resources may approve public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds proposed are in line with changes to Iowa Code chapter 26.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 17, 2009. Such written materials should be directed to Kelley Myers, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-7147; or e-mail Kelley.Myers@dnr.iowa.gov. Persons who wish to convey their views orally should contact Kelley Myers at (515)281-5634 or at Ms. Myers' office by visiting the fourth floor of the Wallace State Office Building.

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section

17A.4(1)“b.” Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The following amendments are proposed.

ITEM 1. Amend Rule 561 – 8.2(17A,26,455B,456A,461A,473) as follows;

561—8.2 (17A,26,455B,456A,461A,473) Contracts for public improvements.

8.2(1) Definition. As used in these rules, “public improvement” means any building or construction work, including road or bridge construction, reconstruction and maintenance, to be paid for in whole or in part by the use of state funds. Iowa Code section 23.21, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) Invitation for bids. When the total cost of a public improvement project exceeds the sum of ~~\$25,000~~100,000 as estimated by the department ~~or the construction services bureau of the administrative services division~~, the department shall ~~advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said notices shall be not less than 15 days prior to the date set for receiving bids. Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. Plans, specifications and the contract form shall be provided to all prospective bidders as provided in the invitation for bids utilize the competitive bid process identified in Iowa Code chapter 26.~~

~~—8.2(3) Invitation for bids. The invitation for bids must state the following items:~~

~~—a. The time and place for filing sealed proposals.~~

~~—b. The time and place sealed proposals will be opened and considered on behalf of the department.~~

~~—c. The general nature of the public improvement on which bids are requested.~~

~~—d. The general terms when the work must be commenced and when it must be completed.~~

~~—e. Any further information or requirements which the department deems pertinent or advisable.~~

~~All sealed bids shall be publicly opened as specified in the notice to bidders. The bids shall be tabulated and made available in a written form to any interested party.~~

8.2(4) Solicitation of quotations. ~~Competitive quotations may be solicited on public improvement projects estimated by the department to cost less than \$25,000. At least three quotations shall be solicited unless there are an insufficient number of local, qualified contractors interested in the project. If the estimated total cost of a public improvement is one-hundred thousand dollars or less, the department shall utilize the competitive quotation process identified by Iowa Code section 26.14, as may be amended. The department shall utilize this competitive quotation process for public improvement contracts below the amount designated by Iowa Code section 26.14(2).~~

8.2(5) Failure to receive a qualified bid or quotation. ~~In the event that no qualified sealed bids or quotations are received, the department may negotiate a contract with a qualified contractor.~~

8.2(6) Exceptions to the requirement for bids or quotations. The director may authorize the

negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids ~~under the following circumstances:~~

~~— a. If the contemplated project involves the provision of utility services or the construction of a utility system and it would not be practicable to allow someone other than the utility company to perform the work.~~

~~— b. Where competition is precluded because of patent rights, secret processes, or control of basic raw materials.~~

~~— c. Where the project involves work of such a specialized nature that only one firm or person can reasonably be expected to accomplish it.~~

~~— d. Where the service or product is provided by a nonprofit private corporation, a governmental body or an educational institution.~~

~~— e. When emergency repair of a public improvement is necessary and delay for advertising or solicitation of quotations might cause serious loss or injury to the state, only as the law allows.~~

ITEM 2. Amend subrule 8.4(1) as follows:

8.4(1) *Contract approval.* All contracts for ~~public improvement or~~ professional services in excess of \$25,000 shall be approved by the director and the appropriate commission if required by statute. All contracts for public improvements in excess of \$100,000 shall be approved by the director and the appropriate commission. Professional services ~~C~~contracts less than \$25,000 shall be approved by the director and the appropriate commission only if required by statute or rule of the commission.

Date

Richard A. Leopold, Director